International Brotherhood of Electrical Workers, Local Union No. 453 *and* Southern Sun Electric Corporation.[1] Case 17-CB-2192

August 31, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On November 19, 1981, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, counsel for the General Counsel and Respondent filed exceptions and briefs, counsel for the Charging Party filed cross-exceptions and a supporting brief, and Respondent filed a brief in opposition thereto.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge concluded, and we agree, that Respondent's fining of Samuel Miller while he was working for Southern Sun, an employer with whom Respondent was engaged in a long and bitter dispute, violated Section 8(b)(1)(A) of the Act. However, we do not adopt the Administrative Law Judge's finding that the fine was unlawful because it was levied "in the context" of Respondent's contemporaneous unlawful picketing of Southern Sun and because Miller worked for Southern Sun and, therefore, was in furtherance of the same proscribed recognitional objective.[2] Rather, we find the fining of Miller unlawful for the following reasons:

The credited evidence shows that Miller, a "traveler" from Respondent's sister local in California where he has been a member since 1958, testified against Respondent during an unfair labor practice proceeding in November 1978,[3] and thereafter received no further referrals through Respondent's hiring hall. On March 14 and 16, 1979, Miller requested Business Manager Hensley to register him on the hiring hall's group I roster, which Hensley declined to do without checking into Miller's qualifications, saying that he was of the opinion that Miller was not qualified, and cautioning him against forcing his name ahead of Respondent's out-of-work members. Hensley further advised Miller he could appeal to the joint appeals committee if he did not like it. That led to the filing of an unfair labor practice charge against Respondent by attorney Donald Jones, who had brought the earlier Board proceeding against Respondent and whom Respondent regarded as anathema because of his involvement with the National Right To Work Defense Fund.

Miller successfully appealed Hensley's decision and was allowed to sign the group I roster on March 22 by Hensley, who warned him that he was making a "big mistake." The unfair labor practice charge subsequently was withdrawn, and Miller obtained a job with Southern Sun in April or May 1979 without Respondent's help or knowledge. On July 10, Miller appeared at a hearing on behalf of a fellow traveler-grievant who was represented by attorney Jones, and 6 days later internal union charges were filed against Miller by Respondent's vice president, Day, alleging union constitutional violations based on his having been observed working for Southern Sun on May 29. Miller was tried and found guilty of violating four constitutional provisions, the main thrust of which prohibits "working for any . . . company declared in difficulty with" the Union, and fined a total of $1,000. Two others, however, were fined $350 and $500, respectively, for violating three of the four provisions for which Miller was fined $800.

The Administrative Law Judge noted that Respondent failed adequately to explain either Day's 2-month delay in filing the charges against Miller or the excessiveness of Miller's fines as compared with the lesser fines levied against the two other individuals who also violated three of the same constitutional provisions by working for employers in disfavor. He nonetheless found "no firm evidence" that Miller's charges and fines were influenced by anything other than his working for Respondent's "arch enemy," Southern Sun, or that such charges and fines would not have occurred absent his protected activities, citing *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), as authority. Accordingly, he predicated the illegality of the charges and fines on an inference that they were imposed in the context of, and were in furtherance of, Respondent's contemporaneous unlawful picketing of Southern Sun.

Contrary to the Administrative Law Judge, we are persuaded that Miller's unwelcome pursuit of his and other travelers' rights to job referrals based

[1] We have corrected the inadvertent misspelling of the name of the Charging Party.

[2] *International Brotherhood of Electrical Workers, Local 453 (Southern Sun Electric Corporation)*, 252 NLRB 719 (1980), found that said picketing was violative of Sec. 8(b)(7)(A) of the Act.

[3] *Sachs Electric Company*, 248 NLRB 669 (1980), where the respondent, *inter alia*, was found to have unlawfully prevented qualified travelers from signing its group I hiring hall referral list, and attempted to coerce working travelers to vacate their jobs in favor of the respondent's unemployed *members*.

on qualifications, Respondent's admittedly disparate treatment of travelers *vis-a-vis* its members, the timing of the internal union charges, and the disparate amounts of his fines firmly indicate that Respondent's actions were not based on its asserted reason, i.e., Miller's employment by Southern Sun. We find, instead, that Respondent opportunely seized upon Miller's asserted violation of its constitution as a vehicle to conceal its retaliation against him because he engaged in the aforesaid protected activities. We further find that Respondent violated Section 8(b)(1)(A) of the Act by its failure to tender Miller job referrals through its hiring hall and by its refusal to register him on the priority referral roster for which he was qualified. We also find that such conduct severely impaired his job prospects and placed him in the position of having to take any available employment, and that, by placing Miller in that position and then fining him because of it, Respondent further violated Section 8(b)(1)(A) of the Act.

The Board, on the basis of the foregoing facts, and the entire record, makes the following:

AMENDED CONCLUSION OF LAW

Substitute the following for the Administrative Law Judge's Conclusion of Law:

"By failing to tender Samuel Miller job referrals; by failing to register him on the priority referral roster, which placed him in the position of having to take any available employment; and by fining him for taking such employment, Respondent violated Section 8(b)(1)(A) of the Act."

THE REMEDY

Having found that Respondent violated Section 8(b)(1)(A) of the Act in the manner set forth herein, we shall order Respondent to cease and desist therefrom and to take affirmative action designed to effectuate the policies of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, International Brotherhood of Electrical Workers, Local Union No. 453, Springfield, Missouri, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a), deleting paragraph 1(b) and renumbering paragraph 1(c) as 1(b):

"(a) Restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act by refusing to tender Miller job referrals; by refusing to register him on referral rosters based on qualifications; and by fining or otherwise disciplining Miller or other members for accepting employment with Southern Sun Electric Corporation, or any other employers, as a consequence where such fine or discipline is imposed to accomplish an object unlawful under the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act by refusing to tender them job referrals, or by refusing to register them on referral rosters based on qualifications, or by fining or otherwise disciplining members for accepting employment with Southern Sun Electric Corporation, or any other employer, where such fine or discipline is imposed to accomplish an objective unlawful under the Act.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind the fine imposed against Samuel Miller after a hearing held on September 27, 1979; and, having previously refunded to him the payments made on said fine, WE WILL make him whole for interest lost on said payments.

WE WILL expunge from our records any documents, entries, or other evidence that Samuel Miller was found to be in violation of certain provisions of the IBEW constitution, and therefore fined as described in the preced-

ing paragraph; and WE WILL inform Miller in writing that this has been done.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 453

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This case was heard before me in Springfield, Missouri, on February 3 and 4, 1981. The charge was filed on January 16, 1980, by Southern Sun Electric Corporation (Southern Sun). The complaint issued on August 7, 1980, was amended during the hearing, and alleges that International Brotherhood of Electrical Workers, Local Union No. 453 (Respondent), assessed a fine against Samuel Miller on October 2, 1979, in retribution for his assorted protected activities, thereby violating Section 8(b)(1)(A) of the National Labor Relations Act, as amended (the Act).

I. JURISDICTION

Respondent's asserted basis for fining Miller is that he was apprehended working for Southern Sun.

Southern Sun is an electrical contractor located in Springfield. It annually purchases and causes to be shipped into Missouri directly from outside the State goods and materials of a value exceeding $50,000.

Southern Sun is an employer engaged in and affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *Facts*

Background: Respondent and Southern Sun have been locked in a dispute of several years' duration.[1]

In March 1976, Respondent picketed Southern Sun for about a week with signs stating that Southern Sun "does not employ the members of" Respondent. This prompted Southern Sun to charge Respondent with, and the General Counsel to prosecute it for, violating Section 8(b)(4)(B) of the Act. The Board, overruling the Administrative Law Judge, concluded that a violation had not occurred. *Local 453, International Brotherhood of Electrical Workers (Southern Sun Electric Corp.)*, 237 NLRB 829 (1978). The Board was affirmed in *Southern Sun Electric Corporation* v. *N.L.R.B.*, 620 F.2d 170 (8th Cir. 1980).

The March 1976 picketing was followed by an NLRB election and Respondent's being certified, in May 1976, as the representative of Southern Sun's employees.[2] Subsequent negotiations failed to yield a contract; and, in May 1978, in the aftermath of an NLRB election in which Respondent and a rival labor organization, Congress of Independent Unions (CIU), were on the ballot, CIU became the certified representative of the Southern Sun employees.[3] Southern Sun and CIU entered into a 3-year contract on June 25, 1978.

In July 1978, Respondent began picketing Southern Sun anew, with signs stating that Southern Sun's employees were "receiving wages, benefits and working conditions that are substandard to that received by members of" Respondent. This caused CIU to charge Respondent with, and the General Counsel to prosecute it for, violating Section 8(b)(7)(A) of the Act.[4] The Board, again overruling the Administrative Law Judge, concluded that there had been no violation. *International Brotherhood of Electrical Workers, Local 453, AFL-CIO (Southern Sun Electric Corporation)*, 242 NLRB 1130 (1979). The Board in turn was reversed in *Congress of Independent Unions [Southern Sun Electric Corporation]* v. *N.L.R.B.*, 620 F.2d 172 (8th Cir. 1980).

The Board Decision just mentioned issued on June 13, 1979. Respondent's picketing of Southern Sun, which had been enjoined during the pendency of that decision, resumed with the same signs on June 22, 1979. In addition, between June and October 1979, Respondent's business manager, Jim Hensley, sent identical letters to some 14 principals and general contractors in the Springfield area, informing them that Respondent planned to picket their projects because "some electrical work is being performed by" Southern Sun, the letters adding that Southern Sun's employees "are working for wages and under conditions which are substandard to those which our Union has struggled many years to obtain." Respondent also ran a number of advertisements in the weekly Springfield Labor Record at or about this time, which, beneath a "Please-Do-Not-Patronize" caption, identified projects on which Southern Sun and others in disfavor were engaged and noted that the work "is not being done by" members of Respondent.

This latest picketing and related activity moved Southern Sun to charge Respondent with, and the General Counsel again to prosecute it for, violating Section 8(b)(7)(A). The Administrative Law Judge and the Board both concluded, this time, that the picketing had a proscribed recognitional object and thus was improper. *International Brotherhood of Electrical Workers, Local 453 (Southern Sun Electric Corporation)*, 252 NLRB 719 (1980).

The fining of Miller: Miller is a journeyman wireman. He belonged to Respondent's sister local in Los Angeles, California, from 1958 through September 30, 1979, at which time he was dropped from membership because of a dues delinquency. He moved to the Springfield area in 1976, and began working as a "traveler," i.e., without

[1] Respondent, in its brief, characterizes the dispute as "much publicized and bitterly contested."

[2] Case 17-RC-7996.

[3] Case 17-RC-8418.

[4] Sec. 8(b)(7)(A) makes it an unfair labor practice for a labor organization "to picket or cause to be picketed, or threaten to picket or cause to be picketed any employer," if an object is recognition, "where the employer has lawfully recognized . . . any other labor organization and a question concerning representation may not appropriately be raised . . . ."

shifting his membership to Respondent, out of Respondent's hiring hall.

Miller went to work for Southern Sun in April or May 1979, remaining until late July. He obtained the job without Respondent's help or knowledge. As previously noted, Southern Sun's employees were then represented by CIU.[5] In the 5 or 6 months preceding his hire by Southern Sun, Miller had been tendered no referrals by Respondent. Hensley, Respondent's business manager, testified that that was "a cold winter" from a job standpoint.

On July 16, 1979, i.e., about 24 days after Respondent began its latest round of picketing against Southern Sun following the favorable Board decision reported at 242 NLRB 1130, Don Day, a vice president of Respondent from 1976 to June 1978, submitted a letter to Robert Willis, Respondent's recording secretary, charging Miller with violating four provisions of the constitution of the parent organization (IBEW) and one of Respondent's bylaws. Day's letter elaborated:

> The violation occurred as follows: I observed Sam Miller working at the Fremont Shopping Center. He was working with Southern Sun employees as an electrician for Southern Sun Electric. This project is adjacent to the Heritage Cafeteria where I was working.
>
> The violation occurred on May 29, 1979 at 2:30 p.m.

On September 27, Respondent's trial board conducted a hearing on the charges, consisting of testimony from Day. Miller did not attend, explaining: "I was afraid of my well-being; it was after dark and I was afraid to go down there."[6] The trial board, comprised of the five people who make up Respondent's executive board, concluded that Miller was guilty of the four alleged constitutional violations, but not of the alleged bylaw violation, and assessed fines totaling $1,000.

More specifically, Miller was fined $200 each for violating article 22, section 4, and article 27, section 1, subsection 3, of the IBEW constitution; and $300 each for violating subsections 10 and 21 of article 27, section 1.

Article 22, section 4, requires members to "promise and agree to and abide by the Constitution and laws of the IBEW and its local unions." Article 27, section 1, subsection 3, proscribes the "violation of any provision of this Constitution and the rules herein, or the by-laws, working agreements, or rules of a L.U."[7] Subsection 10 of that article and section bans "working in the interest of any organization or cause which is detrimental to, or opposed to, the IBEW"; and subsection 21 prohibits "working for any individual or company declared in difficulty with a L.U. or the IBEW, in accordance with this Constitution."

Willis informed Miller of the trial board's decision by letter dated October 2. Miller undertook immediate efforts to perfect an appeal, meanwhile paying $80 against the fine—$20 each in October, November, December, and January.[8] At length, after a considerable amount of correspondence, Miller received a letter dated June 17, 1980, from Charles Pillard, IBEW president, stating that, since the Los Angeles local had dropped Miller from membership on September 30, 1979, the trial board's "October 2 decision was and is, practically speaking, academic."[9]

That was followed by a letter dated June 26, to Miller from Hensley, tendering a refund of the $80 Miller had paid and stating that "the matter is closed in that you were dropped from membership . . . on September 30, 1979 . . . ."

Miller's allegedly protected activities: On November 20, 1978, Miller testified on behalf of the General Counsel in a consolidated unfair labor practice proceeding against Respondent and an employer known as Sachs Electric Company. In that testimony, he described conversations with a job steward in which the steward had quoted Hensley as saying, in essence, that he wanted all travelers to leave the project to create openings for unemployed members of Respondent. The Administrative Law Judge, in a decision dated July 17, 1979, concluded that this conduct was not improper. The Board, however, in a decision issuing the following March, concluded that it was coercive and thus in violation of Section 8(b)(1)(A). *Sachs Electric Company*, 248 NLRB 669 (1980).

The Board further concluded, in agreement with the Administrative Law Judge, that Respondent had violated Section 8(b)(1)(A) and (2) by refusing to let two qualified travelers sign the group I referral list in its hiring hall,[10] and that it had violated Section 8(b)(1)(A) by threatening to file and in fact filing internal union charges against one or the other of those two travelers. One of the two

[5] Miller, however, did not join CIU.

[6] By letter dated August 21, Miller had requested that the hearing, then set for the night of August 23, be rescheduled for a Saturday morning. The letter cited unspecified "physical threats of violence." The trial board, although not complying, did reset the hearing for August 31 at 5:30 p.m. Then, being concerned whether Miller "had been properly notified" of that change, the trial board again reset it, for September 27 at 9 p.m. By letter dated September 11, Miller made a second request that the hearing be on a Saturday morning, his reason this time being that it would enable Bill Rodman, a fellow traveler out of the Los Angeles local, to "appear with me as my counsel." Explaining why this request was not granted, Roger Testerman, trial board secretary, testified: "Our feeling was that we should not set it at his convenience, but maybe at our convenience."

[7] "L.U." meaning local union.

[8] The IBEW constitution states: "No appeal for revocation of an assessment shall be recognized unless the member has first paid the assessment, which he can do under protest. When the assessment exceeds twenty-five dollars ($25.00), payments of not less than twenty dollars ($20.00) in monthly installments must be made." Miller had sought without success to obtain a waiver of this requirement.

[9] The Los Angeles local informed Respondent by letter dated October 8, 1979, that Miller "was dropped from membership as of October 1, 1979, for nonpayment of dues."

[10] The contract then in effect between Respondent and the Springfield Division of the Kansas City Chapter, National Electrical Contractors' Association, provided that Respondent was "the sole and exclusive source of referrals," and that job applicants were to be in four groups. Group I, that of highest priority, was to consist of those with at least 4 years' experience in the trade who lived in Respondent's jurisdictional area, had passed a journeyman's examination, and had worked no less than 1 of the past 4 years under a contract between the parties to the current contract. Group II was to consist of those with 4 years' experience in the trade who had passed a journeyman's examination. Groups III and IV were to consist of those with fewer qualifications.

travelers in question was Bill Rodman, identified by Miller to the trial board, in his second letter seeking a Saturday hearing, as the one Miller wanted to act as his counsel.[11] The other was Larry Nolan.

The charges in *Sachs Electric Company, supra*, were filed by Donald W. Jones, a Springfield attorney. Jones also assisted Miller in drafting his several letters in connection with Day's charges against him and the ensuing fine, and represented Southern Sun in the filing of the present charge and at the present hearing. The record leaves no doubt that Jones is anathema to Respondent. Hensley testified that "it is a known fact by everyone" that Jones long has been "involved with the National Right-to-Work Defense Fund Group," and has been "attacking us in every manner." Day testified that, had he known that Jones was Miller's lawyer, he "might have not waited almost 60 days to file" the charges against Miller.

On March 14, 1979, Miller, then on the group II referral list, spoke to Hensley about signing the group I list. As will be seen, Miller was qualified for group I. Hensley replied that Miller had "better set down," so Hensley could tell him what he would be "up against" should he sign the group I list. Hensley then stated that a number of Respondent's members were out of work, and that Miller would "be forcing" his name "ahead of theirs" if he were in group I. At or about that point, Mike Brumley, Respondent's assistant business manager, mentioned Miller's reluctance to accept referrals to Fort Leonard Wood. The exchange became "heated"—Miller's depiction—and Miller left "in a little bit of a huff," as Hensley recalled. Hensley did not explicitly tell Miller, during this encounter, that he could not be in group I.[12]

Miller and Hensley had another exchange on March 16, the subject again being Miller's wish to be in group I. Hensley told him he was not qualified and that, if he did not like that determination, he could "appeal it to the joint appeals committee." The operative labor contract provided for a three-member appeals committee—one member appointed by Respondent, one by the employer, and one "public member" appointed by the other two—"to consider any complaint of any employee or applicant for employment arising out of the administration by the Local Union of" the hiring hall. Hensley testified that he did not think Miller had worked the requisite year, i.e., 2,000 hours, under Respondent's contract, and that proof also was needed that Miller "was still living in the area and that he had lived here for that length of time constantly." After Miller left on March 16, however, Hensley added up his hours, finding that he did have over 2,000.

On March 20, Miller hand-delivered a letter to Respondent's hall, addressed to the hiring hall appeals committee. Particularizing Miller's qualifications to be in group I, it grieved that Hensley had "knowingly violated" the IBEW constitution on March 16 "by not allowing [him] to sign the proper out-of-work register."

On March 21, the aforementioned Donald W. Jones filed an unfair labor practice charge against Respondent,[13] alleging that it had violated Section 8(b)(1)(A) and (2) by discriminating against Miller, Bill Rodman, and Larry Nolan in the operation of its hiring hall, and by otherwise coercing, intimidating, and harassing them, because they were not members of Respondent and had testified in *Sachs Electric Company*, described earlier.

Also on March 21, Robert Haines, secretary of the Kansas City Chapter, National Electrical Contractors' Association, and the employer appointee on the hiring hall appeals committee, telephoned Hensley concerning Miller's March 20 letter to the committee. The record does not reveal what was said between the two. In the immediate aftermath, however, Hensley telephoned Miller, telling him that it had been ascertained that he had "barely over the year" required for group I, that he probably "would be eligible for Book I," and that he should bring his credentials to the hall for a conclusive determination.[14]

Miller delivered his documentation to the hall on March 22. Hensley, after reviewing it, permitted him to sign the group I list. But, as Miller did so, Hensley remarked that he was "making a big mistake."[15]

On March 22, as well, Hensley submitted a letter to the appeals committee giving his version of the March 16 exchange with Miller and the ensuing developments, including Miller's placement in group I, and ending: "I now consider the matter closed." The appeals committee apparently agreed, there being no evidence that it gave the matter further attention. As for the charge filed by Jones on March 21, his requested withdrawal of it was approved by the Regional Director on April 19.

On June 15, 1979, Rodman grieved to the hiring hall appeals committee that Hensley and Brumley, the assistant business manager, had acted improperly by issuing a rule in 1978 requiring job applicants to reregister at the hall every 2 weeks. A hearing on the grievance was held July 10—6 days before Day filed the charges against Miller. The minutes of the hearing reflect that Rodman was represented by Donald W. Jones, and that Miller and Larry Nolan were present "in behalf of" Rodman. Rodman testified that Miller testified in that proceeding, and the written decision of the appeals committee states that he did. Miller, however, testified that he could not remember if he testified; and Hensley testified that Miller did nothing more than stand up and recite his name. Hensley recalled that Miller came to the hearing with

[11] See fn. 6, *supra*.

[12] Hensley testified that, while he "assume[d]" that Miller went to the hall on March 14 to sign the group I list, he "never did say anything about signing the book." Miller is credited that the matter of his being in group I was expressly broached, and that the exchange, generally, was substantially as here set forth.

[13] Case 17-CB-2067.

[14] The record is in some confusion concerning when Hensley added up Miller's hours, and when, relative to that, he informed Miller that his hours were sufficient for group I. He testified at one point that he called Miller "immediately" after adding the hours. The weight of his testimony conveys the impression, however, that he counted the hours on March 16, but did not call Miller until March 21, after Haines had called him.

[15] Miller is credited that Hensley made this remark, Hensley's denial notwithstanding. Miller generally was a convincing witness, both in demeanor and testimonial content. Even Hensley conceded that Miller "is basically an honest person." Hensley, on the other hand, and despite his concession regarding Miller's honesty, seemed to lapse from the truth on occasion.

Jones. The appeals committee denied Rodman's grievance.

More on the fine: Day testified that he initiated the action against Miller because he "felt it was [his] duty." He explained that Southern Sun is a "scab outfit"; that its "substandard" wage levels are "common knowledge." He denied discussing Miller's transgression with Hensley or any other union official before filing,[16] asserting that he "kept it a secret" lest internal union charges be brought against him for his inaction.[17] That it in fact was a secret to Respondent's officialdom is questionable. Hensley testified that Respondent picketed Southern Sun on the project where Miller was apprehended "a good part of the time they were working there." Moreover, Miller credibly testified that he once observed Day and Brumley in conversation at that project.[18]

Day further testified that, when he filed the charges, he did not know about Miller's November 1978 testimony in *Sachs Electric Company*, or about his March 20, 1979, grievance letter to the hiring hall appeals committee, or about his being named as one of the aggrieved in the March 21, 1979, unfair labor practice charge filed by Jones, or about his being present on behalf of Rodman at the July 10, 1979, hearing of the hiring hall appeals committee. Asked why he waited from May 29—the date he saw Miller working for Southern Sun—until July 16 to file, Day testified that he "just did not have time for it" earlier, and, as mentioned earlier, that he might not have waited so long had he known that Jones was Miller's lawyer.

In January 1979, Respondent's trial board fined two members for offenses described by Roger Testerman, trial board secretary, as "similar" to or bearing "some similarity" to Miller's. James Cunningham, whose offense had been to work for a nonunion employer, was fined $125 each for violating subsections 3, 10, and 21 of article 27, section 1, of the IBEW constitution.[19] William White, whose offense had been to operate union and nonunion shops simultaneously, was fined $250 for violating subsection 3, and $125 each for violating subsections 10 and 21. Neither Cunningham nor White had been connected with Southern Sun.

Asked why Miller was fined so much more than Cunningham and White for violating subsections 3, 10, and 21 ($800 compared to $375 and $500), Testerman testified that "every case is on its own"—"it just depends on the people, I mean the facts." Testerman continued:

> I don't know anything particular why we came to a certain figure on it [Miller's fine]. I know that one thing that had a bearing is the fact that Mr. Miller did not choose to come and defend himself. And we felt we were more inclined to not show any leniency because of the fact that he failed to show up to defend himself or explain anything.

The trial board decided to be "a little more lenient" with Cunningham, according to Testerman, because he not only "appeared before the board and apologized for his actions," but "gave some extenuating circumstances of why he had done this." The extenuating circumstances were that Cunningham had been confined to part-time work because of his ministerial studies, and had children to support.[20]

White, like Miller, was not present for his hearing, however, and Testerman conceded, as concerns his fine: "I don't know that there was any extenuating circumstances." He also conceded that he could not offer "any specific reason" why Miller was fined more than White.

Testerman testified that, while he knew of Miller's having testified in *Sachs Electric Company*, and of his being named in Jones' March 21 unfair labor practice charge, those matters were raised neither in the trial board deliberations leading to Miller's fine, nor previously by the same people in their roles as executive board members. Testerman testified, finally, that he did not know at the time of the trial board's deliberations about Miller's March 20 letter to the hiring hall appeals committee or of Miller's presence at the July 10 Rodman hearing.

Hensley denied that he discussed the Miller situation with the trial board before it made its decision.

The would-be settlement: On January 29, 1981, Respondent offered to settle this matter by posting a standard-form notice to employees and members stating, among other things, that it would not "levy intraunion fines against any members because they exercised their rights guaranteed by Section 7," and that it had "revoked and rescinded the fine . . . imposed by [sic] Samuel J. Miller . . . and [had] refunded to him any amounts that he paid on said fine." The proposed settlement also contained a so-called nonadmission clause, i.e., a statement that Respondent, by entering into it, "does not admit that it has violated the . . . Act."

Southern Sun refused to join in the settlement, and the Regional Director withheld his approval.

B. *Conclusion*

Positions of the parties: The General Counsel's principal contention is that Miller's fine was unlawful because motivated by his having engaged in assorted protected activities, namely, testifying in November 1978 in *Sachs Electric Company*, grieving to the hiring hall appeals committee in March 1979 that Hensley improperly had prevented him from signing the group I list, having an unfair labor practice charge filed against Respondent on his behalf in March 1979, and being present on behalf of Rodman at the hearing of the hiring hall appeals committee in July 1979.

The General Counsel makes the alternative contention that, regardless of underlying motivation, the fine was unlawful because Respondent, having been found by the Board in *Sachs Electric Company* to have prevented qualified travelers from signing the group I list, thereby improperly impairing their job prospects, had no valid

[16] Day's testimony was mirrored by Hensley's in this regard.

[17] Art. 27, sec. 1, subsec. 4, of the IBEW constitution makes it an offense for a member, "having knowledge of the violation of any provision of this constitution, or the by-laws or rules of the L.U.," to fail to "file charges against the offender or to notify the proper officials of the L.U."

[18] Day's denial was unconvincing. Brumley did not testify.

[19] Cunningham also was fined $125 for violating one of Respondent's bylaws.

[20] Respondent's contract makes no allowance for part-time work.

ground to discipline Miller, a traveler, for taking whatever employment he could find, even with Southern Sun.

Respondent contends, first, that the weight of evidence fails to establish improper motivation, precluding the finding of violation; and, second, regardless of the merits, that the matter should be resolved by adoption of the would-be settlement. Respondent does not address the General Counsel's alternative contention, which was not articulated with any clarity during the hearing.

Discussion: To summarize, Respondent and Southern Sun have been in the throes of a long and bitter dispute. Miller began working for Southern Sun in April or May 1979. On June 22, encouraged by the Board's recent determination in *International Brotherhood of Electrical Workers, Local 453, AFL-CIO (Sun Electric Corporation)*, 242 NLRB 1130 (1979), that its earlier picketing was permissible, Respondent reinstituted its picketing of Southern Sun, including the project where Miller worked. That picketing was augmented by "Please-Do-Not-Patronize" advertisements against Southern Sun in the Springfield Labor Record, and by letters to principals and general contractors that picketing of their projects was contemplated because the electrical work was being done by Southern Sun. Day's charges against Miller, on their face because he worked for Southern Sun, were filed July 16. The trial board held its hearing and reached a result September 27. Respondent informed Miller of the result by letter dated October 2.

Given that the charges and fine against Miller occurred in the context of Respondent's resumed picketing and other activity against Southern Sun, that the professed basis for the action against Miller was his working for Southern Sun, that there is no firm evidence that the charges and fine were influenced by anything other than that, and that a deep and longstanding animosity existed between Respondent and Southern Sun, it can only be concluded that the charges and fine would have happened even absent Miller's assertedly protected activities. That Miller was fined more harshly than others for violating the same constitutional provisions is no less consistent with this analysis than with the General Counsel's contention to the contrary. That contention consequently fails.[21]

The General Counsel's alternative contention also fails. While the Board did conclude in *Sachs Electric Company* that the respondent improperly had failed to place two travelers in group I in February and July 1978,[22] no determination has been made that it thereafter violated the Act in that regard. Section 10(b) of the Act precludes inquiry at this late date whether Miller suffered similar victimization before going to work for Southern Sun.[23]

Despite the foregoing, it is concluded that the fining of Miller violated Section 8(b)(1)(A). As previously noted, the Board found in *International Brotherhood of Electrical Workers, Local 453 (Southern Sun Electric Corporation)*, 252 NLRB 719, that Respondent's picketing of Southern Sun around the time Miller was charged and fined had a proscribed recognitional object, therefore violating Section 8(b)(7)(A). It is fair to infer that the fine, happening in the context of this unlawful picketing and because Miller worked for Southern Sun, was in furtherance of the proscribed object as well, and so was itself unlawful.[24]

CONCLUSION OF LAW

By fining Samuel Miller as found herein, Respondent violated Section 8(b)(1)(A) of the Act.

ORDER[25]

The Respondent, International Brotherhood of Electrical Workers, Local Union No. 453, Springfield, Missouri, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Restraining or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act by fining or otherwise disciplining members for accepting employment with Southern Sun Electric Corporation, or any other employer, where such fine or discipline is imposed to accomplish an objective unlawful under the Act.

(b) Seeking to collect or collecting from its members any fines imposed to accomplish an objective unlawful under the Act.

(c) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take this affirmative action:

(a) Rescind the fine imposed against Samuel Miller after a hearing held on September 27, 1979; and, having previously refunded to him the payments made on said fine, make him whole for interest lost on said payments.[26]

(b) Expunge from its records any documents, entries, or other evidence that Samuel Miller was found to be in violation of certain provisions of the IBEW constitution, and therefore fined as described above in paragraph 2(a); and inform Miller in writing that this has been done.

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[21] *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). While *Wright Line* sets forth certain principles in the context of employer motivation, there is no reason why those principles would not be equally applicable in cases such as this, dealing with union motivation.

[22] *Sachs Electric Company, supra* at 677.

[23] *Carpenters and Joiners of America, Local 1620 (David M. Fisher Construction Company)*, 208 NLRB 94, fn. 2 (1974). See also *New York Typographical Union No. 6 (Typemen, Inc.)*, 229 NLRB 886 (1977).

[24] *New York Typographical Union No. 6 (Typemen, Inc.), supra; Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.)*, 227 NLRB 300, 302-303 (1976); *Truck Drivers, Chauffeurs, and Helpers Local Union No. 100, an Affiliate of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Moraine Materials Company)*, 214 NLRB 1094 (1974). The issue whether the timing of the fine, relative to Miller's being dropped from membership, rendered it unlawful has not been raised and, in light of the result herein, need not be addressed.

[25] It is concluded that this Order would more fully serve the policies of the Act than would adoption of the would-be settlement. Respondent's contention in that regard therefore is rejected. All outstanding motions inconsistent with this Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[26] Interest shall be computed in accordance with *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(c) Post at its offices, meeting halls, and hiring halls copies of the attached notice marked "Appendix."[27] Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Furnish to the said Regional Director sufficient signed copies of the attached notice for posting at the premises and projects of Southern Sun Electric Corporation, if Southern Sun is willing.

(e) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[27] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."